IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2794 OF 2001

Harjivan Shamji Gohil ...Petitioner.

Versus

Apana Sahakari Bank Ltd.,
and Ors. ...Respondents.

Shri U.S.R.Singh for the Petitioner.
Mrs.Puja Gaonkar i/b P.M.Gaonkar for Respondent No.1.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 8th FEBRUARY, 2006.

P.C. :

1. This Petition under Articles 226 & 227 of the Constitution of India is directed against an order of the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai in Revision Application No.171 of 2000.

2. The order under challenge is dated 12th February, 2001. This petition was placed for urgent Ad-interim orders before this Court on 25th June, 2001. Notice before admission was issued and following order came to be passed :

"Heard learned Counsel for the petitioner. Notice before admission returnable after four weeks. Learned Counsel for Respondent No.1

waives service of the notice. Ad-interim reliefs in terms of prayer clause (e). The petitioner to deposit Rs.50,000/- within a period of three weeks. On deposit of this amount, ad-interim reliefs to continue for twelve weeks.

Call for record and proceedings."

. Thereafter, applications were made for extension of time to deposit the sum of Rs.50,000/-. That time was extended till 9th January, 2006.

3. The Petition has not appeared for Admission thereafter and when it was noticed that it has not appeared for Admission, I directed that the same should be placed on Board for Admission.

4. Today when this matter was placed for Admission, Shri Singh learned Counsel appearing for the petitioner prays for time to take instructions from his client with regard to payment of further sums or furnishing of bank-guarantee. He submits that time be also granted, after a direction is issued to the first respondent - Apana Sahakari Bank Ltd. to produce the documents viz., the agreement/surety bond, to enable the petitioner to make appropriate submissions.

5. In my view, the Petition is pending since 2001.

No steps have been taken during the pendency of the same to get the above documents placed on record. No steps have been taken to claim the direction which is now sought from this Court after lapse of four and half years. The petitioner has also not shown his bonafides inasmuch as even a sum of Rs.50,000/- was paid after four and half years. In this view of the matter, I do not think that this is a fit case for grant of any further adjournment. More so, when ad-interim order in terms of Prayer Clause '(e)' of the Petition has been granted since 25th June, 2001. Hence, application for adjournment is refused.

6. From a perusal of the order passed by the Divisional Joint Registrar as also from the Roznama which is maintained in the office of the Assistant Registrar, it is apparent that the petitioner has admitted that he guaranteed the repayment of the loan availed by the principal-borrower. He stood as surety and that is apparent from the Roznama dated 20th May,1997/7th July, 1997 which bears the signature of the petitioner herein. This fact is recorded by the Assistant Registrar while issuing the recovery certificate (Page-64). The petitioner was a party-opponent to the proceedings before the Assistant Registrar and arrayed as opponent No.5. In these circumstances, I find that the Divisional Joint Registrar was in no error in rejecting the Revision

Application of the petitioner. It is pertinent to note that what is urged before the Joint Registrar is not that the petitioner was denied opportunity to either peruse the documents or to make appropriate submissions, before the Assistant Registrar, but that he stood discharged as guarantor on account of certain concessions allegedly granted to the principal-borrower.

7. I have perused the order of the Divisional Joint Registrar and in Para-6 of the same a finding of fact is recorded by the Divisional Joint Registrar that it is admitted position that the petitioner signed the documents of loan and stood surety. He was aware of the obligations as a surety. He was also not able to substantiate his pleas that there was variance in the contract and therefore, he stands discharged as a surety. Relying upon the settled principle that the liability of a surety is co-extensive with that of the borrower, the Divisional Joint Registrar has proceeded to dismiss the Revision Application, which in any event was filed after an enormous and unexplained delay.

8. The discretionary and equitable jurisdiction under Articles 226 & 227 of the Constitution of India is not meant for persons like the petitioner who after undertaking all obligations to repay the loan in default by the principal-borrower, choose to turn

around and make a completely false case that the documents allegedly relied were not signed and that they are not aware of the obligations thereunder. The dues of the cooperative Bank in question could not be recovered for more than five years. Today, also the petitioner is not willing to show his bonafides and offer any sum. Although, the property belonging to the petitioner is attached, it is because of the ad-interim order that the Bank was prevented from proceeding against him in accordance with law.

9. No case for interference under Articles 226 & 227 of the Constitution of India is made out. Petition dismissed.

10. At this stage, at the request of Shri Singh, ad-interim order to continue for a period of two weeks. Thereafter, it would be open for the respondent Bank to withdraw the sum deposited in this Court with accrued interest as also to proceed to recover the amount under the recovery certificate in question.

(S.C.DHARMADHIKARI,J.)